



STATE OF MICHIGAN

DEPARTMENT OF COMMUNITY HEALTH
LANSING

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TO: Long Term Care Facility Administrators

FROM: Mike Dankert, Director
Bureau of Health Systems

SUBJECT: Interim Policy for Facility Reported Incidents

INTERIM POLICY SUMMARY

- Clarifies the reporting requirements for alleged violations and the results of investigations for mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property to the facility administrator and State Survey Agency as mandated by 42 C.F.R. 483.13(c)(2) and (4).
- Requires immediate reporting (within 24 hours) to the State Survey Agency of alleged violations involving mistreatment, neglect, abuse that involve harm to a resident, injuries of unknown source, and misappropriation of resident property of any value.
- Requires reporting of findings of investigations to the State Survey Agency within 5 working days of the incident of alleged mistreatment, neglect, abuse that involve harm to a resident, injuries of unknown source, and misappropriation of resident property of any value.
- Requires the recording and quarterly submission of an incident log to the State Survey Agency for **all alleged violations and investigation findings, including those that do not result in harm to a resident**, that involve mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property.

A. Purpose

This policy establishes an interim procedure for the filing and processing of facility reported incidents and investigations, especially facility reported incidents and investigations that do not involve injury, harm or pain to a resident.

B. Background

Federal regulation 42 C.F.R. 483.13(c)(2) requires the immediate reporting of alleged violations of abuse, neglect, mistreatment, misappropriation of resident property and injury of an unknown source to administrator of a facility and to the State.

Federal regulation 42 C.F.R. 483.13(c)(3) prescribes that a facility must have evidence that alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in process.

Federal regulation 42 C.F.R. 483.13(c)(4) prescribes that results of all investigations must be reported to the administrator or his designated representative and to the State Survey Agency within 5 (state) working days of the incident. If the alleged violation is verified, appropriate action must be taken.

On December 16, 2004, the Centers for Medicare and Medicaid Services issued S&C-05-09 clarifying the nursing home reporting requirements for alleged violations of mistreatment, neglect, and abuse, including injuries of unknown source, and misappropriation of resident property. The information in the memorandum clarified current policy and required implementation no later than 30 days after the issuance of the memorandum.

On January 13, 2005 nursing home providers were advised of the requirements of S&C-05-09.

Since the CMS clarification, facility reported incidents have increased from 210 reports in FY04 to 4462 in FY06. Over 3000 of the incidents reported in FY06 did not involve harm to residents. Recent data shows approximately 9% of the allegations on these reports were substantiated. Citations for abuse have increased since FY04 but are not commensurate with the significant increase in facility incident reports received. Bureau systems and staff are overburdened with the volume of facility reported incidents resulting in delays in intake processing, fax machine lockout preventing reports from being received and delays in review of critical information. Providers are affected similarly by the reporting requirements. Providers have commented about the burden of completing and filing reports while noting the benefit of being able to identify patterns in falls and resident to resident incidents.

The Centers for Medicare and Medicaid Services (CMS) is aware of the volume of facility reported incidents received by the Bureau. CMS has not provided additional resources to handle the increase in facility reported incidents. CMS is aware of this interim policy.

C. Definitions

Mistreatment – There is no CMS definition. BHS' working definition is “to handle or treat roughly or wrongly.”

Neglect – Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Abuse – The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

Injuries of unknown source – an injury that includes both of the following conditions:

- The source of injury was not observed by any person **or** the source of the injury could not be explained by the resident; **and**
- The injury is suspicious because of the extent of the injury or the location of the injury (e.g. the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time or the incidence of injuries over time.

Misappropriation of resident property – alleged theft, illegal use, taking or misappropriation of resident property of any value.

Immediately – means as soon as possible, but not to exceed 24 hours after discovery of an incident.

D. Interim Policy

Facilities

Facilities shall comply with the federal law and CMS requirements on reportable incidents and will continue to ensure that:

- all alleged violations involving mistreatment, neglect, abuse, injuries of unknown source and misappropriation of resident property are immediately reported to the facility administrator;
- an investigation is commenced immediately and the resident is protected while the investigation is in process;
- the results of the investigation are reported to the administrator;
- reports are completed for all incidents that allege mistreatment, neglect, abuse, injuries of unknown source and misappropriation of resident property;
- reports are completed for investigation findings of allegations of mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property;
- the facility **immediately** submits to the State Complaint Investigation Unit incident reports and submits investigation reports **within 5 state working days** for allegations of mistreatment, neglect, abuse that involve injury, physical harm or mental anguish, injuries of unknown source, and misappropriation of resident property of any value;

- the facility maintains on a daily basis an incident log of all allegations **and** investigation findings of all incidents that allege mistreatment, neglect, abuse, injuries of unknown source and misappropriation of resident property;
- the facility retains incident reports **and** investigation reports of alleged mistreatment, neglect, and abuse and supporting documentation that do not involve harm or injury to residents for collection or subsequent review by the Bureau;
- the facility submits on a quarterly basis, effective January 1, 2007, its quarterly compilation of the facility incident log for all incidents and investigations of alleged mistreatment, neglect, abuse, injuries of unknown source and misappropriation of resident property, including alleged mistreatment, abuse or neglect that does not involve harm of a resident.

Facilities will begin logging incidents and investigations alleging mistreatment, neglect, abuse, injuries of unknown source and misappropriation of resident property December 1, 2006, the effective date of this policy. Facility logs should be submitted for receipt by the Bureau by the 15th of January, March, June, and September. The logs should be mailed/faxed to the Licensing Officer responsible for the facility. Facilities are presumed to intend to comply with the quarterly reporting requirements unless the Bureau is notified otherwise. A sample facility log is attached.

Note: These reporting requirements are separate from, and in addition to, the directions for Emergency Reporting issued to Long Term Care Facility Administrators dated September 13, 2006.

Bureau Staff

The Complaint Investigation Unit will continue to receive facility reported incidents that allege mistreatment, neglect, abuse that involve physical harm, mental anguish, injuries of unknown source and misappropriation of property. These reports will be entered in ACTS, priorities assigned and investigations completed by the Complaint Investigation Unit or coordinated with Division of Nursing Home Monitoring survey activity when appropriate.

Division of Nursing Home Monitoring staff will monitor facility logs received after January 1, 2007 for timely receipt and adherence to reporting format. All logs will be initially reviewed to ensure timely entry of incidents and investigations and completeness of information. Licensing Officers may assist facilities to understand the requirements of the facility log. The Licensing Officer retains the discretion to require individual, contemporaneous reports for any incident and investigation findings for any facility.

Facility logs will be reviewed as often as deemed practicable by the Licensing Officer. At a minimum review will occur as part of off-site preparation for a standard survey looking for patterns of abuse, neglect or mistreatment, repeat entries for residents, repeat entries for a person allegedly responsible for mistreatment, injury or neglect. Bureau staff will use judgment whether to include in the survey sample residents who appear to be the subject of abuse, mistreatment or neglect or suspicious injury, or whether to make inquiry regarding a resident or staff person who is

identified as an alleged perpetrator of mistreatment, neglect, abuse, suspicious injury or misappropriation of property. Licensing Officers may direct that residents identified on the log be included in the survey sample or monitored during survey activities. Surveyors are responsible for reporting to their manager discrepancies with the log, e.g. inaccurate entries, evidence that the log entries are not recorded at the time incidents occur and investigations are completed.

After review of the incident log, a Licensing Officer may request copies of any reports or documents relating to a log entry, may request a plan of correction for an incident, may request the facility voluntarily conduct an in-service, may schedule a monitoring visit.

Complaint Investigation Unit surveyors will review facility logs compiled since the last standard survey on-site to determine if there are entries relative to the subject of a complaint, e.g. previous incidents involving a resident, staff member or alleged perpetrator.

The Division Directors and managers with responsibility for this policy will review the policy for its affect on the health, safety and welfare of residents, its efficiency and effectiveness, and make recommendations that are appropriate.

Training

Bureau staff responsible for long term care survey and certification will receive a copy of this policy and receive training on the policy and survey protocols by December 1, 2006.

Training on this policy will be available to facilities prior to implementation.

Effective Date

The information in this policy clarifies current abuse reporting requirements and modifies the process for reporting non-harm incidents. The revised reporting requirements for non-harm incidents is effective December 1, 2006. The initial submission of facility logs is January 15, 2007. This policy is effective for surveys started on or after January 1, 2007 for which a facility log is received.

Questions regarding this policy should be directed to your Licensing Officer.